IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

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JUDGMENT

Heer Singh
vs
State of Rajasthan

S.B. CRIMINAL APPEAL NO.381/1987 AGAINST THE JUDGMENT DATED 29.9.1987 PASSED BY SHRI GANESHDAN CHARAN, ADDL. SESSIONS JUDGE, RAJSAMAND IN SESSIONS CASE NO.22/1986.

DATE OF JUDGMENT : 22nd December, 2006

PRESENT

REPORTABLE

HON'BLE MR.MOHAMMAD RAFIQ,J.

Mr.Mridul Jain, Advocate, for the appellant.
Mr.Rameshwar Dave, Public Prosecutor.

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BY THE COURT: -

This criminal appeal has been filed by the appellant Heer Singh against the judgment dated 29.9.1987 whereby the Addl. Sessions Judge, Rajsamand convicted him for offence under Section 307 IPC and sentenced him to undergo rigorous imprisonment for 10 years and a fine of Rs.3,000/- and in default of payment of fine, to further undergo simple imprisonment of one and half years and further convicted him for offence under Section 324 IPC and sentenced him to undergo RI for two years. Both the sentences were directed to run concurrently.

According to the case set up by the prosecution one Lalu S/o Shri Bhajja Parmar resident of Kama submitted a written report to SHO, Police Station Khamnor on 16.12.1985 at 4.00 PM inter alia alleging therein that when he after taking dinner came out of his house at about 9-10 PM on that day, he saw Heera and Nathu beating his nephew Roopa and causing injuries to him with knife. When he (informant) rushed to save Roopa, he was also beaten by Heera S/o Kesha, Vardi Wd/o Kesha, Mst. Khamani and Mst. Bhanwari. They were armed

with Lathis, knives and Kunt. Resultantly both of them suffered injuries by these weapons. Kalu, Laludas and two other persons saved them. A regular First Information Report was registered against the accused for offence under Section 307 IPC. The police on completion of investigation filed Challan against all the aforenamed five accused. The learned trial judge upon conclusion of trial and after hearing arguments of the parties, acquitted accused Smt. Vardi, Khamani and Bhanwari, all females and also acquitted accused Nathu Singh for offence under Sections 307/149, 324/149 and 148 IPC. While accused Heer Singh was acquitted of charge under Section 148 IPC, but at the same time, he was the sole accused who was convicted under Sections 307 and 324 IPC and was sentenced as stated hereinabove.

I have heard the arguments advanced by Shri Mridul Jain, learned counsel for the appellant and Shri Rameshwar Dave, learned Public Prosecutor and perused the record.

Shri Mridul Jain, learned counsel for the appellant argued

that the learned trial court has committed an error of law in convicting the accused appellant for offence under Sections 307 and 324 IPC. It failed to appreciate the prosecution evidence in its correct perspective resulting into serious prejudice being caused to the appellant. While the learned trial judge has acquitted rest of the four accused on appreciating of the very same set of evidence, the conviction of the appellant recorded for offence under Section 307 and 324 IPC on the same evidence was per se illegal. The learned trial judge failed to correctly appreciate the defence version especially the fact that no explanation whatsoever has been given by the prosecution as to how injuries were received by the appellant. Shri Jain, learned counsel for the appellant argued that the prosecution failed to prove any enmity between the accused and the complainant party and therefore the prosecution also failed to prove the motive of the incident. The quarrel had in fact taken place at the spur of moment. The trial judge has not appreciated that the ingredient of the offence under Section 307 IPC were not at all proved inasmuch as looking to the number and nature of injuries and the fact

that injuries were caused on non-vital parts of the body of injured, the charge for offence under Section 307 IPC against the accused appellant could not be brought home. The learned trial judge failed to appreciate that prosecution failed to prove requisite intention or knowledge of the accused for attempted murder which in the present case was not at all proved. Besides, the trial judge failed to appreciate whatever the accused appellant did was so done in exercise of his right of private defence of the person and property. This was clearly explained by the accused appellant in his statement under Section 313 Cr.P.C. In view of the nature of injuries and evidence, the present case does not travel beyond Section 324 IPC. Learned counsel for the appellant while referring to the statement of PW-14, Dr. Meghraj Sirohiya argued that as per the medical report, the charge against the accused does not travel beyond Section 324 IPC, therefore, accused should be extended benefit of probation. It was argued that injuries examined by the PW-14 from any angle whether from the point of view of their dimension or nature or location can hardly be said to be sufficient to prove the charge under Section 307 IPC

against the accused appellant. He further argued that accused appellant was a young person of the age of 35 years at the time of incident and now he is about 56 years in age. The incident which took place as far back as 1985 and more than 21 years have gone by since then. He therefore argued that since the charge against the accused appellant is not proved beyond Section 324 IPC, therefore, the accused should be extended the benefit of probation. Alternatively it was submitted that if the offence against the accused appellant is taken to have been proved, such offence does not travel beyond the scope of Section 308 IPC. To buttress all these arguments, learned counsel for the appellant has relied upon the judgment of this Court in Shrawan Kumar Vs. State of Rajasthan 2000(1) RCC 638, Prabhu Ram Vs. State of Rajasthan 1987 RCC 25, Uda Vs. State of Rajasthan 2000 WLC (Raj.) UC 109, Onkarlal Vs. State of Rajasthan 2000(1) RCC 729 and judgment of Hon'ble Supreme Court in Tukaram Gundu Naik Vs. State of Maharashtra 1994 Crl. L.J. 224.

On the other hand Shri Rameshwar Dave, learned Public

Prosecutor argued that the charges against the appellant were proved by overwhelming evidence. While conclusions arrived at by the learned trial judge were supported by independent eye witness PW-1 Kalu Singh who has also been named in the FIR, the injured Roop Singh and Lalu have also been examined respectively as PW-11 and PW-13 who have corroborated his version in all material particulars. Apart from PW-14 Dr. Megh Kumar Shirohiya and PW-17 Dr. Naveen Sharma who have proved the injuries on the person of injured Roop Singh and Lalu and their gravity, PW-20 Dr. K.C. Vyas has clearly proved that injury sustained by injured Roop Singh was sufficient in the ordinary course of nature to cause his death. Learned Public Prosecutor further argued that the injured Roop Singh would have certainly died if he had not been timely taken to hospital. The fact that the accused-appellant on seeing Roop Singh and Nathu Singh quarrel with each other, went back to his house and came back with a knife and than caused not only caused a severe blow on the person of Lal Singh but he also followed Roop singh and inflicted two repeated blows at his back. Learned Public Prosecutor while referring to the

statement of PW-18 Dr. N.S. Kothari and PW-20 Dr. K.C. Vyas argued that the injury no.1 suffered by the injured Roop Singh was so serious that it could cause his death in the ordinary course of nature. Learned Public Prosecutor argued that the incident cannot be said to have occurred at the spur of moment and the evidence shows that the accused seeing the incident immediately went to his house and came back with a 'Chhuri' (long knife) with an intention to murder both the injured Roop Singh and Lalu and inflicted severe blows on their person. He argued that injury no.1 of the injured Lal Singh was also opined by PW-14 Dr.Meghraj Shirohiya and Dr. PW-20 Dr. K.C. Vyas as dangerous to life. The learned trial judge was fully justified in convicting the accused-appellant.

I have given my thoughtful consideration to the arguments advanced by learned counsel for the parties and perused the material on record. In order however to appreciate the arguments of learned counsel for the parties, it would be appropriate to first deal with the evidence which has come on record.

PW-1 Kalu Singh was the person who was named in the FIR alongwith Ladudas who came to rescue of the injured. PW-1 Kalu Singh is therefore an independent witness. He has stated that both the complainant as well as accused parties were known to him. He was watering his crops at the time of incident. His agricultural field was about 100 steps away from the residence of Lalu. Upon hearing hue and cry when he reached near the residence of Lalu Singh, he saw that Roop Singh and Nathu Singh were quarreling with each other. Nathu Singh had a Lathi in his hand and Lahar Singh was without any arm. Roop Singh was stating that it was his turn to take water from the well for irrigating his agricultural filed, but Nathu Singh was insisting that it was not his turn. Then Lal Singh came there at that point of time and asked them not to fight. Thereafter Bhanwari, Khumani and Vardi, all females, came there and started throwing stones towards Roop Singh, Lalu and Lahar Singh. He then noticed that accused Heer Singh came from his residence. He had a "Chhuri" (long knife) in his hand. Soon after arriving at the seen of occurrence, he

inflicted blow of the knife at the back of Lal Singh. When Roop Singh tried to run away from there, accused Heer Singh followed him and inflicted two knife blows on his back. At that time Vajja and Khumana also came there and they caught hold of the accused Heer Singh. Heer Singh then went back to his house and also carried his knife. In his cross-examination, PW-1 Kalu Singh has stated that Lal Singh came there after his arrival. The quarrel went on for about 15 minutes after he reached there. He denied that Natu Singh had already received injuries when he reached there. He could not say whether Roop Singh and Lahar Singh had beaten Nathu Singh before his arrival. He however stated that accused Heer Singh came there after he (Kalu Singh) arrived there but he heard the cry of Heer Singh, Lahar Singh and Roop Singh at very high pitch of their voice.

PW-11 Roop Singh injured has also corroborated the statement of PW-1 Kalu Singh in material particulars. PW-11 Roop Singh apart from being an eye witness, is also an injured person having suffered grievous injures. He has stated that

when he was going out of his house, he saw Heer Singh, Nathu Singh and Lahar Singh talking to each other about the turn of taking water from the well. Lahar Singh was insisting that it was his turn whereas Nathu Singh and Heer Singh said that Lahar Singh had no claim over the well. When PW-11 Roop Singh stated that it was the turn of Lahar Singh suddenly Khumani, Bhanwari and Vardi, all females, came there and started throwing stones at Lahar Singh. Lal Singh also reached there and asked these peoples not to fight. Nathu Singh was having 'Lathi' in one hand and 'Kunt' in another. Nathu Singh threw 'Kunt' towards Lal Singh due to which he sustained injury on his ear. Accused Heer Singh suddenly went back to his house and came back with knife. He caused knife injury on the back of Lal Singh and then further followed him and caused another injury again on his back. He further stated that when he (Roop Singh) started running, Nathu Singh hit his legs with lathi and wives of Nathu Singh and Heer Singh caught hold him and Heer Singh caused two knife blows on his back. Heer Singh was about to inflict third blow on his stomach, then Heer Singh was caught hold of by Ladu Das and Kalu Singh

and this is how his life was saved. PW-11 Roop Singh has remained unshaken in his cross-examination.

Similarly, PW-13, another injured Lalu was examined, but his statement had to be recorded by Presiding Officer only on the basis of signs and gestures made by him because he had at that point of time lost his voice. This was certified by General Hospital, Udaipur. His statement was recorded according to provisions contained in Section 119 of the Evidence Act. According to this witness, he knew the accused. He pointed towards accused Heer Singh and Nathu Singh that it were they who caused injury on his ear and at his back. He pointed out towards accused Heer Singh that he caused blow at his back with the pointed sharp edged weapon whereas he also indicated towards Nathu Singh to say that he caused injuries on his ear.

PW-14 Dr. Megh Kumar Sirohiya examined the injured Roop Singh and Lalu. So far as injured Roop Singh is concerned, PW-14 Dr. Megh Kumar Sirohiya has stated that his

injuries no.1 and 2 were caused at his back. Similarly, regarding another injured Lalu also, PW-14 stated that while injuries no.1 and 2 were caused at his back and third injury was caused near his left ear in dimension of 2cmx1/2cm,which was simple in nature. X ray was advised for injury no.1, but in X ray report Ex. Petitioner/18 no bony injury was found. If the injuries caused on the person of Roop Singh are examined, it would be evident that his first injury is incised wound of 2cmx1/2cmxskin deep sustained by him on left infra scapular region, which was caused by sharp edged weapon. Second injury was again an incised wound in the size of 3cmx2cmxmuscle deep in mid line over lower thorasie vertebral column caused by sharp edged weapon. While opinion was reserved regarding first injury, second injury was certified to be simple in nature. The injury report indicates that although patient was conscious, but he was having difficulty in respiration. X ray was advised in regard to his first injury. As per X ray report Ex.P/17 he was not found to sustain any fracture. Similarly, injured Lalu also sustained two injuries both of them were incised wound. While first injury was in the size

of 3cmx3/4cm/plural space on the left side of vertebral column of left intra scapular region, dimension of second injury was 2cmx1/2cmxskin deep on the right intra scapular region, 1 cm below tip of scapula. Both these injuries were caused by sharp edged weapons. Third injury on the person of injured Lalu was lacerated wound in the size of 1/2cmx1/4cmxfull thickness of lobule of left ear caused by blunt weapon. While opinion was reserved for first injury, next two injuries were said to be simple in nature. With regard to condition of Lalu, it was opined by the medical officer that his general condition was dangerous to life at the time of examination. The medical officer also advised for X ray for injury no.1 and according to X ray report Ex.P/18, no bony injury was seen. Apart from the aforesaid two injured Roop Singh and Lalu on the side of accused, injuries were also suffered by other persons too. Lahar Singh suffered one lacerated would on upper lobule, which was simple in nature caused by blunt weapon. Dialy Bai also suffered lacerated wound on middle phalanx which again was opined to be simple in nature caused by blunt weapon.

The bed head ticket of Roop Singh as indoor patient of General Hospital, Udaipur has also been exhibited which is marked as Ex.P/25. In regard to his general condition, a note was made by Dr.K.C. Vyas, the medical officer whose treatment he was undergoing, which was proved by his statement from A to B. This note stated as under: -

> "A.EXAM. Revealed dullness and diminished air entry on Rt. Base and diminished air on lt. side with hyper resonant chest on percussion. Needle Aspiration on rt. Side posteriorly revealed Blood. On lt. side anlinatory an aspiration air guished out so inter costal tube placed in mid Axillary live I.C. Space – air bubbles came out -connected to under water seal-B"

PW-14 Dr. Megh Kumar Shirohiya has clearly stated that injured Lal Singh was in critical condition when he was brought for examination and further that Roop Singh had injury caused by sharp edged weapon. PW-20 Dr. K.C. Vyas has also explained this injury when he stated that injured Roop singh was having great difficulty in breathing because his right lung was severely damaged and the left lung was also having hyper resonant because of the entry of air in the plural cavity. In the

medical term this is known as surgical emphysema. When he entered a needle on both sides of his chest while blood oozed out from his right side of chest through plural cavity, air came out from the left. He explained that while left lung of the injured was having air therefore he had to insert a tube for exist of entire air from the left side of the chest. This doctor has noted this fact in his note from A to B on the bed head ticket of the injured Roop Singh as indoor patient (Ex.P/25). According to him, nature of injuries on his lungs were such as would have caused his death in the ordinary course of the nature. PW-17, Dr. Naveen Sharma, Medical Jurist has stated when he took X ray of injured Roop Singh, he noticed plural effusal with surgical emphysema. PW-18, Dr. N.S. Kothari another Medical Jurist has also made a similar statement about the condition of injured Roop Singh and has further provided corroboration to the testimony of PW-14 Dr. Meghraj Shirohiya. Regarding injury no.1 of Lal Singh, PW-14 Dr. Meghraj Shirohiya and PW-20 Dr. K.C. Vyas have categorically opined to be dangerous to life.

What has to be appreciated is whether in the light of the evidence of the entire set of witnesses, especially the medical evidence, charge against the accused appellant for offence under Section 307 and 324 IPC can be taken to have been proved and further whether the findings to this effect recorded by the trial court suffer from any illegality. Learned trial court in the impugned order has already clearly found the motive of the incident proved on the basis of evidence. It was a dispute about the turn of water for the purpose of irrigation, which was stated not only by injured PW-11 Roop Singh and PW-13 Lalu Singh but also PW-1 Kalu Singh who is altogether an independent witness. The evidence that has come on record clearly prove that when quarrel initially started between Roop singh and Nathu Singh there was no weapon in the hands of Roop Singh though Nathu Singh had a Lathi. When Lahar Singh reached there, quarrel started with weapons specially when Heer Singh came with 'Chhuri' (long knife) from his house and inflicted blows at the back of the injured. When Roop Singh started running from there, Heer Singh followed him and inflicted two repeated knife blows at his back. PW-11

Roop Singh has also provided corroboration to this version of PW-1 Kalu Singh in all material particulars except that he has further stated that the females namely Khumani, Bhanwari and Vardi also threw stones towards injured and further that Nathu Singh had Lathi in one hand and Kunt in another. But later part of his statement has not been believed by the learned trial court because there was no corroboration in so far as that part of his evidence is concerned. However, independent version given by PW-1 Kalu Singh did receive corroboration in all material particulars from the statement of PW-11 Roop Singh and at the same time, provided corroboration to the statement of PW-14 Lalu which was by recourse to Section 119 of the Evidence Act.

Adverting now to the argument of learned counsel for the appellant that injuries sustained by PW-11 Roop Singh and PW-13 Lalu were result of the appellant's exercising his right of private defence, this argument has been rejected by the trial court by convincing reasonings. The learned trial court did not accept that the injuries sustained by the injured on the site

were caused due to exercise of right of private defence by the accused. In my view, findings recorded by the learned trial court on that aspect do not suffer from any legal infirmity.

Coming now to the case laws relied upon by the learned counsel for the appellant, it should be noted that the Hon'ble Supreme Court in Tukaram Gundu Naik (supra) was dealing with a case where the evidence had come on record that incident had taken place at the spur of the moment and none of the injuries were caused on vital organs of the body. Besides it was dark at the time of occurrence. In the present case it cannot be accepted that the incident had taken place at the spur of moment as the quarrel between the parties was result of an altercation between Roop singh and Nathu Singh and Lahar Singh later joined them. It was thereafter that Lal Singh came there to intervene and then the situation took serious turn when the accused appellant when coming to know about the incident came from his house with 'Chhuri' and attacked Roop Singh as well as Lal Singh.

In Sharawan Kumar (supra) also facts were entirely

different. In that case all the injures received by the injured were certified to be simple in nature inasmuch as none of the injures were found to be on any vital part of the body. Regarding dimension of the injuries in the report, their depth was not much because that was not probed. On reading para no.25 of the judgment of Sharwan Kumar (supra), I find that there was some mis-reading of the injury report. While the learned Judge in para no.25 has recorded that all the injuries received by the injured were simple in nature and the condition of the injured was stated to be normal, but the injury report, which has been reproduced in para no.10 clearly indicate that the medical officer opined with regard to injuries no.1, 3 and 4 that they were dangerous to life and other injuries were simple in nature. On assumption of the facts that were contrary to record, the offence against the accused was held to be proved only under Section 324.

Yet another case relied upon by learned counsel for the appellant in Prabhu Ram (supra) is the judgment in which not much discussion either of the facts or law has been made and

therefore it cannot be accepted and followed as a precedent. But this judgment has been cited by learned counsel for the appellant on the question of sentence. In that case, the accused was convicted for offence under Section 308 IPC for causing knife blow on the person of the injured. In those facts, this Court sentened the accused to rigorous imprisonment for four years with a fine of Rs.2000/-. In the case of Uda (supra) also the knife blow was inflicted in the abdomen of the injured and in those facts, this court in para no.9 while noting that the doctor had not opined that the injury caused was sufficient in the ordinary course of nature to cause death and therefore if the injured had died, the accused could be convicted only under Section 304 IPC and not under Section 302 IPC and therefore offence was found to have been proved only under Section 308 IPC.

Examined in the light of the arguments advanced by learned counsel for the appellant, I find that statements of PW-14 Dr. Meghraj Sirohiya and PW-20 Dr. K.C. Vyas are very much relevant for the present purposes. PW-14 Dr. Meghraj

Sirohiya was the author of injury report of both the injured namely Roop Singh and Lal Singh. He in his statement has categorically proved the injuries of both the injured Roop Singh Ex./12 and Lalu Ex.13. He clearly stated that he had written that the injury no.1 caused to Lal Singh was dangerous to life. Similarly PW-20 Dr. K.C. Vyas has also stated that the injury caused to Roop Singh punctured both his lungs while blood was deposited in one of the lungs, air was coming out from another. This injury was sufficient in the ordinary course of nature to cause death. PW-19 Dr. N.S. Kothari has also supported his version and stated injury no.1 suffered by injured Roop Singh was sufficient in the ordinary course of nature to cause his death. In view of the nature of the injury and the fact that injuries were caused by the accused Heer Singh not only at the back of injured Roop Singh but also Lal Singh and that too after following him and moreover such injuries were repeated, one after the another and the fact the accused Heer Singh had come after knowing about incident from his house and was armed with a 'Chhuri' (long knife), it can safely be held that he not only had the requisites intention

therefore also knowledge that if he by that act caused death of the injured Roop Singh, he would be guilty of murder.

Essential ingredients required to be proved in a case for offence under Section 307 IPC are that (i) the death of human being was attempted, (2) that such death was attempted to be caused by or unconscious of the act of accused and (3) such act was done with the intention of causing death or it was done with the intention of causing such bodily injury as (a) the accused knew to be likely to cause death or (b) was sufficient in the ordinary course of nature to cause death or that the accused attempted to cause death by doing such an act known to him be so eminently dangerous that it must in all probability cause (a) death or (b) such bodily injury as is likely to cause death. In other words, in an offence committed under Section 307 all other ingredients of the offence of a murder are present except the actual death of the victim. All that the court has to see is that the injury irrespective of its result, was caused with the intention or knowledge coupled with some over tact in execution thereof as required by Section 307 IPC.

In the facts of the case it cannot be accepted that the offence against the appellant was proved only under Section 308 IPC or 324 IPC. In so far as injuries caused to Roop Singh are concerned, in view of the nature of the injuries especially injury no.1 and the manner in which such injuries were caused, it cannot be said that it was a case of attempt to commit culpable homicide not amounting to murder so as to be covered only by Section 308 IPC. The learned trial court therefore has not committed any error of law in convicting the accused for the offence under Sections 307. And the learned trial court also did not commit any error of law in convicting the accused under Section 324 IPC for the injuries caused to Lal Singh. The present appeal to the extent of challenge to conviction under Sections 307 and 324 is therefore liable to be dismissed.

Now coming to the sentence awarded to the appellant, I find that the learned trial court has while convicting the accused for offence under Section 307 and 324 IPC has taken

note of the fact that the accused was guilty of causing two blows each at the back of both the injured by using 'Chhuri' (long knife) and blows were so powerful that they reached to their lungs. The learned trial court also has been influenced by the fact that one of the injured Lal Singh lost his speech for life. It was on consideration of this fact, the learned trial court has awarded sentence of 10 years RI and compensation of Rs. 2000/- to be paid to injured Lal Singh. In so far as sentence of two years simple imprisonment is concerned, the same has been awarded offence under Section 324 IPC. PW-14 Dr. Meghraj Sihrohia in his cross-examination has categorically stated that injuries which were received by Lal Singh were not culpable of causing paralysis. There was no such injury so as to loss of speech of injured Lal Singh for life. Although he stated that Lal Singh was unable to speak when he was medially examined but that was because he was in the semi-conscious state at that time. PW-20 Dr. K.C. Vyas has also in his statement has nowhere stated that injuries suffered by Lal Singh were such as could cause loss of his speech. No other evidence has been brought on record which can prove that Lal

Singh lost his speech only because of the injuries suffered by him in this incident. Although it remains a fact that though the recording of his statement in the court was delayed but when the statement of Lal Singh was recorded during trial, he could not speak therefore his statement had to be recorded by recourse to the provisions contained in Section 119 of the Evidence Act. The factum of having lost speech has however weighed very heavily with the learned trial court in awarding sentence of RI for 10 years to the accused appellant.

In this view of the matter, the sentence to the extent of 10 years cannot to be justified in the facts of the case. It would be however appropriate that the accused appellant is sentenced to RI for five years in so far as offence under Section 307 IPC is concerned and it is ordered accordingly. The sentence of two years awarded under Section 324 IPC is maintained. Both the sentences however are ordered to run concurrently. The sentence with regard to fine of Rs.3000/- as already awarded by the learned trial court is also maintained and in default of payment of fine, further sentence of one and

half years in also maintained. Consequences to follow.

While the appeal in regard to conviction is dismissed in toto, but it is partly allowed in regard to sentence as directed hereinabove.

(MOHAMMAD RAFIQ), J.

c.p.goyal/-